



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 9, 1996

Ms. Jeralynn "Jackee" Cox
Ethics Attorney
Texas General Land Office
Stephen J. Austin Building
1700 North Congress Avenue
Austin, Texas 78701-1495

OR96-1840

Dear Ms. Cox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101030.

The Texas General Land Office (the "GLO") received a request for the following:

- (1) All employment records pertaining to Marcus D. Alexander;
- (2) All records describing Marcus D. Alexander's current job duties and responsibilities;
- (3) All records reflecting the current employment status of Marcus D. Alexander with the General Land Office.

You state that the GLO will release most of the requested information to the requestor, but you claim that the remainder of the information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.111 of the Government Code. You have submitted to this office for review a representative sample of the information that you seek to withhold from disclosure.¹

Mr. Alexander's personnel file contains the names of mineral lessees who are currently being audited by the GLO and information about the audit strategies that the GLO employs. You assert that the names of mineral lessees under active audit are excepted from disclosure under

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

section 552.101 of the Government Code² as information made confidential by sections 52.134, 52.140, and 53.080 of the Natural Resources Code. Section 52.134 makes contracts for the sale or processing of gas confidential in the hands of the GLO. Nat. Res. Code § 52.134. Section 52.140 deems confidential "[a]ll information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records, as provided in Section 52.135 of this code." Nat. Res. Code § 52.140. Section 53.080 deems confidential "[a]ll information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records as provided by Section 53.068 of this code." Nat. Res. Code § 53.080. The plain language of these statutes protects information obtained from mineral lessees, but not the names of mineral lessees being audited by the GLO. Thus, section 552.101 does not except the names of the mineral lessees from disclosure. *See* Open Records Decision No. 478 (1987) (statutory confidentiality under section 552.101 generally requires express language making particular information confidential).

Next, you argue that information in Mr. Alexander's personnel file that reveals the GLO's audit strategies is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Some of the information regarding the GLO's audit strategies represents the advice, opinion, or recommendation of GLO employees. However, some of the information for which you have claimed section 552.111 is severable factual information that is not protected by section 552.111. We have marked the information that you may withhold from disclosure under section 552.111.

The only audit information that is not excepted from disclosure under section 552.111 consists of the names of mineral lessees who are currently being audited by the GLO. You contend that this information is excepted from disclosure under section 552.108 of the Government Code, and you refer us to *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995) to support this contention. In *A & T*, the court determined that the Comptroller of Public Accounts could withhold certain audit information pursuant to section 552.108. Here, we do not address the issue of whether the holding in *A & T* makes section 552.108 applicable to GLO audit information. In any event, the release of the names of those currently being audited was not at issue in *A & T*, since the Comptroller had already released those names. *See id.* at 4, 8-10, 13.

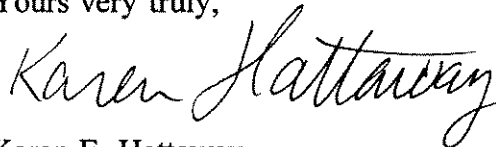
²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

In reviewing Mr. Alexander's personnel file, we noted information in the file that may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(1)(A), together with section 552.024 of the Government Code, permits a government official or employee to choose whether to allow public access to his home address and telephone number, social security number, and family member information. Thus, you must not release this information from Mr. Alexander's personnel file if, before the request for this information was made,³ Mr. Alexander asked that this information be kept confidential.

Finally, Mr. Alexander contends that his personnel file is protected in its entirety under section 552.101 as information made confidential by common-law privacy. Information is protected by the doctrine of common-law privacy if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Having reviewed representative information from Mr. Alexander's personnel file, we conclude that the information is not highly intimate and embarrassing, and the public has a legitimate interest in the information. See Open Records Decision Nos. 542 (1990), 470 (1987). Therefore, with the exception of the marked information that is excepted from disclosure under section 552.111 and the personal information that may be protected under section 552.117, the requested information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101030

Enclosures: Submitted documents

³ Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

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(w/o enclosures)